UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| NESTLÉ HEALTH SCIENCE - PAMLAB, INC. AND BRECKENRIDGE PHARMACEUTICAL, INC.<br><br>Plaintiffs,<br><br>v.<br><br>METHOD PHARMACEUTICALS, LLC, J&D LABORATORIES, INC., BRETT BARTEL AND ANDREW ROSENTHAL<br><br>Defendants. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | Case No. 3:15-CV-1660-L |

**JOINT STATUS REPORT**

TO THE HONORABLE MAGISTRATE JUDGE RENEE HARRIS TOLIVER:

Plaintiffs Nestlé Health Science – Pamlab, Inc. ("NHS-Pamlab") and Breckenridge Pharmaceutical, Inc. ("BPI") (collectively, "Plaintiffs") and Defendant Method Pharmaceuticals, LLC ("Method"), by and through undersigned counsel, and pursuant to Magistrate Judge Toliver's April 19, 2016 Order (Doc. 70), jointly file a joint status report concerning the following unresolved discovery issues concerning Plaintiff's First Set of Interrogatories to Method (Doc. 36 at 4-14), Plaintiffs' First Requests for Production, Electronically Stored Information & Things to Method (Doc. 36 at 32-50), the deposition of Rhett Sean Daniels, and the subpoena seeking Mr. Daniels' correspondence served on Plaintiffs' counsel, Norton Rose Fulbright US LLP:

**A. OUTSTANDING ISSUES CONCERNING PLAINTIFF'S FIRST SET OF INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION, ELECTRONICALLY STORED INFORMATION & THINGS TO METHOD**

Since the April 18, 2016 hearing, Method has amended its objections and responses to Plaintiffs' First Requests for Admission, First Interrogatories and Plaintiffs' First Requests for

Production. The remaining disputes between the parties concern Method's objections to Request for Production No. 42 and Interrogatory No. 14.

Plaintiffs' Request for Production No. 42 and Method's response are as follows:

> **REQUEST NO. 42:** All DOCUMENTS CONCERNING the ownership of METHOD, including without limitation, share certificates, corporate ownership records, corporate resolutions, bylaws and articles of incorporation, partnership agreements, contracts and amendments relevant to the above.
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> **RESPONSE NO. 42:** Method objects to this Request as overly broad and unduly burdensome in that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any claim or defense in this false advertising action as the ownership of Method has no bearing or relationship to whether there is a false statement of fact in a commercial advertisement regarding the Method Products which is the only subject matter of the Complaint.

Plaintiffs' Interrogatory No. 14 and Method's response are as follows:

> **INTERROGATORY NO. 14**: IDENTIFY all investors, owners, partners, members, managers, and affiliates of METHOD, including the date of investment, acquisition, partnership, employment, or affiliation with METHOD; and the financial contribution and/or interest in METHOD, percentage ownership in METHOD, title of position with METHOD, salary paid by METHOD, distributions paid by METHOD, and any other compensation paid by METHOD.
>
> **ANSWER NO. 14**: Method objects to this Interrogatory as overly broad and unduly burdensome in that it seeks information regarding, "all investors, owners, partners, members, managers, and affiliates of Method," while Pamlab's Complaint does not contain any allegations regarding same. As such, the information sought is not reasonably calculated to lead to the discovery of admissible evidence, and is not relevant to any claim or defense in this false advertising action.

After further conference, Method has agreed to identify the members, owners, partners and managers in Method Pharmaceuticals, LLC but has informed Plaintiffs that it will not identify investors or provide the other information sought by Interrogatory No. 14, including, *e.g.*, the dates of investments, acquisition, partnership, employment, or affiliation with METHOD; and the financial contribution and/or interest in METHOD, percentage ownership in METHOD, etc. Method also refuses to produce documents responsive to Request No. 42.

Plaintiffs' position is that FED. R. CIV. P. 26(b)(1) allows parties to obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. Under the Federal Rules, the scope of discovery is broad, and discovery should be allowed unless the party resisting discovery can show how a request is not relevant or otherwise objectionable. *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990). As a business organization, the only way Method is able to conduct business is through the actions of investors, owners, members, managers, affiliates, and the like. Consequently, it seems highly likely that "investors, owners, members, managers and affiliates" of Method may have discoverable information concerning Method and its business practices, and Plaintiffs are entitled to discover both their identity and their specific role in the company. Plaintiffs note that their claims are not limited to "false advertising" and that they believe the information about Method's investors (identity, timing and amount) sought by Interrogatory No. 14 and Request for Production No. 42 is relevant to its tortious interference with contract claims and theft of trade secret claims, including the claims made against Method's employees Brett Bartel and Andrew Rosenthal. Plaintiffs note that Method's objections do not show or explain how the information is not relevant or how providing the information is otherwise objectionable or burdensome. Nonetheless, and without waiver to their right to seek the documents and information requested in Interrogatory No. 14 and Request for Production No. 42, Plaintiffs are willing to accept Method's representation that it will identify its members, owners, partners and managers, and to take a "wait and see" approach as to whether Plaintiffs need the additional information sought by Interrogatory No. 14 and Request for Production No. 42. If it becomes clear that discovery concerning this information is necessary in the future, Plaintiffs reserve the right to raise Method's objections with the Court.

**B. DEPOSITION OF RHETT DANIELS**

Plaintiffs have recently contacted Mr. Daniels in an effort to schedule his deposition. Mr. Daniels has informed Plaintiffs that he is unable to travel to Dallas for a deposition because his son is ill, and he wants his deposition to take place in Fort Myers, Florida, where he and family reside. Method has expressed its strong preference that the deposition take place at the U.S. Federal Courthouse in Fort Myers. However, the parties have learned that the Southern District of Florida does not permit attorneys and others to bring electronic devices, *i.e.*, phones, laptops, stenographic or video equipment, etc., into the Federal Courthouse without a court order. The parties therefore request Judge Toliver's assistance in securing permission to schedule and conduct the deposition at the U.S. Federal Courthouse in Fort Myers, if possible. The parties propose that is they will contact the U.S. Federal Courthouse in Fort Myers to learn what information is needed to obtain such an order and inform Judge Toliver of these requirements by May 13, 2016. The parties also propose that they will prepare any forms or materials that require Judge Toliver's signature and will submit this material to Judge Toliver promptly.

**C. SUBPOENA TO NORTON ROSE FULBRIGHT US LLP**

As discussed during the April 19, 2016 hearing, Method served Plaintiffs' undersigned litigation counsel with a subpoena purporting to require counsel to produce all communications and documents it has received from Mr. Daniels since May 12, 2015. Plaintiffs believe that Method or its counsel have been copied on most or all of the correspondence they received from Mr. Daniels. Plaintiffs also believe that Defendants and their counsel may have correspondence from Mr. Daniels that Plaintiffs' counsel do not currently possess. In the interest of resolving this dispute, Plaintiffs' counsel has proposed that after Defendants produce all documents responsive to Plaintiffs discovery requests, both Plaintiffs' litigation counsel and Defendants' current and prior litigation counsel in this case (including Method's attorneys at Lynn Pinker

Cox Hurst and Kirkland & Ellis, its Florida counsel in the satellite litigation concerning Mr. Daniels' deposition, and Mr. Bartel and Mr. Rosenthal's attorneys) will review the production and supplement Defendants' production with any emails or documents they received from Mr. Daniels during the same time frame that Defendants do not have. Method's current counsel has stated that he is not yet in a position to either accept or decline this offer. The parties will seek further assistance of the court should it become necessary.

Dated: May 9, 2016

***Attorneys for Plaintiffs***
**Nestlé Health Science – Pamlab, Inc. and Breckenridge Pharmaceutical, Inc.:**

*s/ Kathy Grant*

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**Pursuant to Local Rule 11.1, electronically signed by Kathy Grant with the express permission of Christopher J. Schwegmann.*

**LOCAL RULE 11.1 - CERTIFICATE OF MULTIPLE SIGNATURES**

I, KATHY GRANT, hereby certify that the foregoing was approved as to form and substance by all persons required to sign same. I hereby further certify that I have express permission to submit the foregoing document electronically on behalf of all parties.

*s/Kathy Grant*
Kathy Grant
***Attorneys for Plaintiffs***

## CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed with the Clerk of the Court using the ECF-system for the Northern District of Texas and that the ECF-system will send a Notice of Electronic Filing to the following CM/ECF participant(s) on this the 9th day of May, 2016:

| **Counsel for Defendants Method Pharmaceuticals, Inc., Brett Bartel and Andrew Rosenthal:** | **By Email:** |
|---|---|
| Christopher J. Schwegmann | cschwegmann@lynnllp.com |

*s/Kathy Grant*
Kathy Grant
***Attorneys for Plaintiffs***